

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-1296

DONALD RAY MATHIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 6, 2010

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT,
FIRST DIVISION
[NO. CR-2009-64-4]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Donald Ray Mathis appeals following his convictions for several drug-related offenses. Specifically, he challenges the sufficiency of the evidence as a whole and the trial court's admission of certain evidence. We affirm.

The State charged appellant with possession of marijuana with intent to deliver, simultaneous possession of drugs and firearms, possession of drug paraphernalia, and maintaining a drug premises. Prior to the trial, appellant filed a motion in limine seeking to prohibit testimony or other evidence regarding any illegal substances discovered during the investigation other than marijuana. Appellant argued during a pretrial hearing that, because he had not been charged with possession of any drug but marijuana, the admission of evidence of other drugs would be unfairly prejudicial. However, because appellant had also been

charged with maintaining a drug premises, the trial court denied the motion, finding that every drug found on the premises was relevant to the drug-premises charge. The court also expressed concern with the timeliness of appellant's motion.

During the trial, the State presented the testimony of a forensic chemist, who identified cocaine, Xanax, methadone, marijuana, and dimethone sulphone (a commonly used cutting agent) among the State's exhibits. Appellant objected to this testimony for the same reasons as previously argued, but the trial court overruled the objection. The State also presented testimony of Investigator Josh Newton, a narcotics investigator who had been surveilling a woman named Gwendolyn Miller and the premises in question—a room at the Econo Lodge motel—around the time appellant was arrested. Investigator Newton testified that, although neither he nor any of his informants had purchased drugs directly from appellant, appellant was frequently seen with Miller at the motel and was present during several drug transactions with Miller. These transactions occurred both in the motel room and in a burgundy vehicle later found to be registered in the names of Donald R. Mathis and Gussie Mathis. During one of the controlled buys from Miller, an individual attempted to purchase drugs from appellant, but appellant responded to the individual, "I do not sell rocks that small."

Appellant was eventually arrested while exiting the motel room and attempting to enter the burgundy vehicle. Gwendolyn Miller was arrested shortly thereafter. Narcotics officers then executed a search warrant on the motel room. In the nightstand on the left side of the bed, officers discovered \$1015 in cash; two loaded semi-automatic firearms; a set of

digital scales covered in a white residue; a glass marijuana pipe; a wallet containing appellant's identification; a bill of sale for a vehicle listing Donald Mathis as a buyer; credit-acceptance paperwork showing Donald R. Mathis as the co-signor; two boxes of plastic baggies; a razor blade; and 164 grams of marijuana packaged in individual baggies. In other parts of the room, investigators found a Guess purse containing suspected marijuana, crack cocaine, and Xanax, as well as Gwendolyn Miller's identification; various bills and paperwork in the name of Gwendolyn Miller; more boxes of plastic baggies; a photograph of Miller and appellant together; a ledger listing different names and nicknames next to different money amounts; numerous men's and women's clothing items, many with the tags still attached; and several other new, high-dollar items. Appellant objected to the introduction of the drugs into evidence, but the evidence was admitted as relevant to the drug-premises charge.

Investigator Newton went on to testify that, in his experience as a narcotics investigator, the purpose of carrying a firearm while carrying drugs was for protection and to keep from being robbed. He stated that dealers running a drug house would frequently keep a firearm for that purpose. Investigator Newton also testified that the motel room was rented in the name of Wanda Tate, although nothing bearing that name was found in the room. This was not unusual, according to Investigator Newton, because in his experience, a person maintaining a drug premises would often keep the premises in a third party's name as a deterrent to law enforcement. He also stated that, in his experience, individuals who purchase marijuana for individual use buy approximately a quarter of an ounce at a time.

Following Investigator Newton's testimony, the jury heard from Gwendolyn Miller, who testified that the guns and drugs found in the motel room belonged to both her and appellant. At the time of the trial, Miller was serving time in the penitentiary pursuant to a plea agreement made prior to the State requesting her testimony at appellant's trial. Since being arrested, Miller and appellant had married.

After the State rested, appellant moved for directed verdict. He argued that the State had not proven that he possessed the marijuana or drug paraphernalia, that he was in control of the drugs and firearms found on the left side of the room, or that he actually maintained the motel room. The trial court denied the motion. Appellant rested without calling any witnesses and renewed his motion for directed verdict, which was again denied. The jury found appellant guilty of all charges and recommended sentences totaling 112 years, which the trial court adopted. The sentencing reflects appellant's habitual-offender status.

Appellant first argues that the evidence presented at trial was insufficient to support the verdicts. The test for determining the sufficiency of the evidence is whether substantial evidence supports the verdict. *Ross v. State*, 346 Ark. 225, 230, 57 S.W.3d 152, 156 (2001). Substantial evidence is direct or circumstantial evidence that is of sufficient certainty and precision to compel a conclusion one way or the other which passes beyond mere speculation and conjecture. *Id.* On appeal, this court will not weigh the evidence or assess the credibility of witnesses, as those are matters for the jury. *Rains v. State*, 329 Ark. 607, 612, 953 S.W.2d

48, 51 (1997). We view the evidence in the light most favorable to the appellee and consider only the evidence that supports the verdict. *Id.* at 613, 953 S.W.2d at 52.

A person may be found guilty of possession of a controlled substance, including marijuana, with the intent to deliver if the person delivers or possesses the substance with the intent to deliver the substance to someone else. Ark. Code Ann. § 5-64-401 (Supp. 2009). A person may be found guilty of possession of drug paraphernalia if the person possesses drug paraphernalia with the intent to use the paraphernalia to ingest or inhale a controlled substance. *Id.* § 5-64-403 (Supp. 2009). A person commits the offense of simultaneous possession of drugs and firearms if the person unlawfully possesses a controlled substance while in possession of a firearm. *Id.* § 5-74-106 (Supp. 2009). It is unlawful for a person to knowingly keep or maintain any place or premise that is resorted to by a person for the purpose of illegally using or obtaining a controlled substance. *Id.* § 5-64-402 (Supp. 2009).

In this case, substantial evidence exists to support the verdicts. On several occasions, appellant was seen coming to and going from the motel room in question. Appellant was present inside the room and in the burgundy vehicle during controlled drug transactions with a woman named Gwendolyn Miller and was observed participating in an attempted drug transaction. Inside the motel room, investigators discovered appellant's personal identification and other personal paperwork with the names of both appellant and Miller, along with substantial amounts of marijuana, two firearms, and drug paraphernalia. Also in the room were substantial amounts of other drugs and a ledger that appeared to keep track of drugs sold

on credit. The State went even further by presenting the testimony of Miller that the drugs and guns in the room belonged to both her and appellant. Altogether, this is substantial evidence that appellant resided in the motel room and that the motel room was used as a headquarters for appellant's and Miller's drug operations. It also shows that the drugs, paraphernalia, and firearms belonged to appellant. The jury could infer from the attendant circumstances that appellant possessed these items with the requisite intentions. Therefore, the evidence was clearly sufficient to support the convictions.

Appellant argues for the first time on appeal that Miller's testimony should be discounted because it was not supported by corroborating evidence. To preserve an argument for appeal, a party must raise an objection in the trial court that is sufficient to apprise the court of the particular error alleged. *Mayes v. State*, 351 Ark. 26, 29, 89 S.W.3d 926, 928 (2002). A party cannot change the grounds for an objection or argument on appeal but is bound by the scope and nature of the arguments he made below. *Id.* Because appellant did not make an argument before the trial court regarding corroborating accomplice testimony, he is barred from asserting that argument now. Nevertheless, the argument is meritless because all of the other evidence presented to the jury—particularly the discovery of drugs, paraphernalia, and guns in the same nightstand as appellant's personal identification—supports Miller's testimony that the guns and drugs belonged, at least in part, to appellant.

Appellant next argues that the trial court erred by admitting evidence of other drugs besides that for which appellant was specifically charged. The admissibility of evidence is

within the sound discretion of the trial court, and we will not reverse a trial court's decision regarding the admission of evidence absent a manifest abuse of discretion. *Martin v. State*, 354 Ark. 289, 299, 119 S.W.3d 504, 510–11 (2003). Likewise, a trial court's ruling on relevancy is entitled to great weight and will not be reversed absent an abuse of discretion. *Id.*

Here, appellant takes issue with the admission of cocaine, Xanax, and methadone during the trial because he was not charged with possession of those drugs. The trial court ruled repeatedly that these drugs were relevant to the charge of maintaining a drug premises. Because that offense is not limited to a particular type of drug, and because those drugs were housed in the premises appellant was charged with maintaining, we cannot say that the trial court abused its discretion in finding the drugs to be relevant.

Lastly, appellant argues that his motion in limine should not have been denied as untimely. We need not consider this argument because, as discussed above, the trial court found that the evidence appellant sought to exclude by the motion was relevant and admissible. Even if the timeliness of the motion had not been considered by the trial court, the motion was properly denied on its merits.

Affirmed.

ROBBINS and BROWN, JJ., agree.